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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,000	07/22/2003	Gary William Flake	600189-148	8179

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EXAMINER	
KARDOS, NEIL R	

ART UNIT	PAPER NUMBER
3623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/625,000	FLAKE ET AL.	
	Examiner	Art Unit	
	Neil R. Kardos	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 January 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 9-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 9-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This is a **FINAL** Office Action on the merits in response to communications filed on January 4, 2010. Currently, claims 1-7 and 9-14 are pending and have been examined. Examiner believes that an interview would help facilitate allowance of the present application after Applicant has considered the present office action and the art cited herein.

Response to Arguments

Applicant's arguments filed on January 4, 2010 have been fully considered but they are not persuasive. Applicant argues the following:

(A) Cheung is not a valid prior art reference under § 103(c). (See Remarks, pages 6-7).

(B) The cited references do not teach "wherein the at least one measure includes removing maximum and minimum figures to produce the quantitative statistic." (See Remarks, pages 6-7).

(C) The claimed quantitative statistics are not old and well known. (See Remarks, pages 7-8).

Applicant's arguments will now be addressed in turn.

(A) Cheung is not a valid prior art reference under § 103(c). (See Remarks, pages 6-7).

Regarding argument (A), Examiner respectfully disagrees. 35 U.S.C. § 103(c) recites: "Subject matter developed by another person, *which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title*, shall not preclude patentability

under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person." (35 U.S.C. § 103(c) (emphasis added)). The Cheung reference (US 2003/0028529) was published on February 6, 2003. The present application was filed on July 22, 2003. Thus, Cheung qualifies as prior art under § 102(a), and is not subject to the exclusion of § 103(c).

(B) The cited references do not teach "wherein the at least one measure includes removing maximum and minimum figures to produce the quantitative statistic." (See Remarks, pages 6-7).

Regarding argument (B), Examiner notes that this is a new limitation. Rejections of this limitation can be found below. Applicant's arguments regarding this limitation are moot in view of these new grounds of rejection.

(C) The claimed quantitative statistics are not old and well-known. (See Remarks, pages 7-8).

Regarding argument (C), Examiner respectfully disagrees. First, Examiner notes that the limitation recites "at least one of" a total revenue per period calculation, a median revenue per period calculation, an average revenue per period calculation, an average of median bidded price calculation, a median of median clicked price calculation, and a median click calculation. Calculating a total revenue per period is certainly old and well known. Thus, the limitation is

met because is only requires "at least one of" the recited quantitative statistics. Also, see the following references, which provide documentary support for Examiner's Official Notice:

- Skinner (US 2003/0105677), paragraphs 12, 38, and 43;
- Rebane (US 2004/0088241), figures 9, 10, and 13;
- Meisel (US 7,035,812), columns 16-19 and 29;
- Anderson (US 2004/0093327), paragraph 153; and
- Corn (US 2004/0167845), figures 11-13.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7 and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skinner (US 2003/0105677) in view of Marks (US 2001/0051911) and Cheung (US 2003/0028529), and further in view of Hanson, "Idea Futures: Encouraging an Honest Consensus."

Claim 1: Skinner discloses in a computerized system for allowing transactions in instruments, the instruments being capable of being valued based on values of term-based concepts, and terms of the concepts being useable in computerized searches, a method for valuing a concept, the method comprising:

- obtaining quantitative data associated with the concept (see ¶ 38; ¶ 12: lines 1-9, disclosing tracking search terms to determine effectiveness based on a number of impressions, number of clicks, and number of sales);
- electronically operating on the quantitative data to produce a quantitative statistic by using at least one of: a total revenue per period calculation; a median revenue per period calculation; an average revenue per period calculation; an average of median bidded price calculation; a median of median clicked price calculation; and a median click calculation (see id., disclosing analyzing the data as well as collecting it; ¶ 41, disclosing the amount of a purchase); and
- electronically determining a value of the concept based at least in part on the produced statistic such that the value is used in the computerized system allowing transactions in the instruments (see id., disclosing determining the search terms effectiveness to advertising and marketing; paragraphs 12 and 37, disclosing using the value in a computer).

Skinner also discloses wherein the concept comprises a set of search terms relating to a common theme. Moreover, Marks discloses a more narrow interpretation of this limitation (see figures 2A and 2B; ¶ 10). Skinner does not disclose wherein a granularity of the set of search terms relating to the common theme of the concept is defined. However, Marks discloses this limitation (see figures 2A-2C; ¶¶ 10, 27-29, and 40). Skinner and Marks are both directed to bidding and ranking in search engines. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the bidding system of Marks (including "concept" groupings) and the bidding system of Skinner. One of ordinary skill in the art would

have been motivated to do so for the benefit of efficiencies gained by purchasing a group of key words rather than individual key words (see e.g. Marks, ¶ 3).

Examiner takes Official Notice that all of the claimed quantitative statistics were well-known in the art at the time the invention was made. Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the claimed quantitative statistics to determine Skinner's search term's effectiveness. One of ordinary skill in the art would have been motivated to do so for the benefit of tailoring their bidding decision to what they believe is the most accurate measure of effectiveness. As documentary evidence of Examiner's Official Notice, please see: Skinner (US 2003/0105677), paragraphs 12, 38, and 43; Rebane (US 2004/0088241), figures 9, 10, and 13; Meisel (US 7,035,812), columns 16-19 and 29; Anderson (US 2004/0093327), paragraph 153; and Corn (US 2004/0167845), figures 11-13.

Skinner does not explicitly disclose electronically monitoring for intentional manipulation and taking at least one measure to prevent intentional manipulation of the value of the concept in response to the detection of intentional manipulation. Cheung teaches this limitation (see paragraph 150, disclosing screening clicks to determine if they are chargeable). It would have been obvious to one of ordinary skill in the art at the time the invention was made to screen the clicks of Skinner according to the click-screening methods disclosed by Cheung. One of ordinary skill in the art would have been motivated to do so for the benefit of maintaining integrity by eliminating fraudulent clicks. Skinner also does not explicitly disclose wherein the at least one measure includes removing maximum and minimum figures to produce the quantitative statistic. Examiner takes Official Notice that it was well-known in the art at the time the invention was made to remove maximum and minimum figures to produce a statistic. This is

commonly referred to as removing outliers, and is an old and well-known statistical technique. Furthermore, this technique was employed before the claimed invention, for example, when judging competitions. It is common to remove the highest and lowest scores in a competition where there are several judges; this is done to prevent tampering by judges (and was done before the present invention at, for example, the Olympics). Finally, a common technique for finding the median value of a set of numbers is to sequentially remove the highest and lowest numbers until there is only one remaining number; the last remaining number is the median value of the set. Because several of the quantitative statistics are median values, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the technique of removing the maximum and minimum figures to produce the median value. One of ordinary skill in the art would have been motivated to do so for the benefit of an accurate representation of the median. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the old and well-known statistical technique of removing the maximum and minimum values when producing the statistics disclosed by Skinner and the other cited references. One of ordinary skill in the art would have been motivated to do so for the benefit of accuracies gained by preventing tampering and removing outliers.

Skinner does not explicitly disclose electronically determining a value of one or more instruments based at least in part on the value of the concept. Hanson discloses an "idea futures market" wherein people would exchange coupons representing concepts (see at least "Procedures" section on page 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Hanson's idea futures market to the search-term based concepts of Skinner and Marks. One of ordinary skill in the art would have been motivated to do

so for the benefit of increased accuracies in valuing search terms (see also "Advantages" beginning on page 7).

Claim 2: Skinner discloses wherein obtaining quantitative data associated with the concept comprises obtaining quantitative data associated with the demand for one or more of the terms of the set of search terms (see ¶¶ 12 and 37-38, disclosing obtaining demand based on impressions, clicks, and sales; ¶ 48, disclosing obtaining competitor demand information).

Claim 3: Skinner discloses wherein obtaining quantitative data associated with the concept comprises obtaining quantitative data associated with the demand for one or more of the terms of the set of search terms for use in advertising (see ¶¶ 12 and 38, disclosing obtaining data related to advertising and marketing).

Claim 4: Skinner discloses measuring the demand for use in advertising based on one or more amounts paid for use in advertising (see ¶ 48, disclosing obtaining competitor bid information).

Claim 5: Skinner discloses measuring the demand for use in advertising based on one or more amounts paid for use in advertising, wherein the use in advertising comprises obtaining one or more rights to have an advertisement included in results from one or more computerized searches using at least one of the terms of the term set (see id.).

Claim 6: Skinner discloses operating on the data by using the data in at least one mathematical formula (see ¶¶ 44-45 and 50-60).

Claim 7: Skinner discloses collecting quantitative data relating to one or more Pay-Per-Click auctions (see ¶¶ 5, 8, 20, and 39).

Claim 9: Skinner does not explicitly disclose wherein monitoring for intentional manipulation comprises analyzing trading patterns, comparing IP addresses or cookies between ad clicks and trading accounts, or similar techniques. Cheung discloses this limitation (see paragraph 150, disclosing detecting clicks generated at a particular location or form a particular resource). It would have been obvious to one of ordinary skill in the art at the time the invention was made to screen the clicks of Skinner according to the click-screening methods disclosed by Cheung. One of ordinary skill in the art would have been motivated to do so for the benefit of maintaining integrity by eliminating fraudulent clicks.

Claim 10: Skinner discloses taking at least one measure to maintain liquidity (see ¶¶ 16 and 21, disclosing eliminating bid gaps and preventing overbidding, which serve to maintain liquidity in an advertiser's account).

Claim 11: Skinner does not explicitly disclose operating on the data by using a median click calculation, and comprising omitting from the median click calculation one or more highest and lowest price quantities.

However, Skinner teaches determining a number of clicks per time period (see ¶ 38) and using that to determine a reasonable estimate of the expected clicks for a future time period (see ¶ 43: lines 10-11).

Examiner takes Official Notice that it is well known in the statistical arts to average a set of data, including using a median value, over past time periods in order to determine an expectation for future time periods. Furthermore, Examiner takes Official Notice that it is well known in the statistical arts to omit outliers of highest and lowest values from a median calculation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use well-known statistical methods in conjunction with the click data disclosed by Skinner. One of ordinary skill in the art would have been motivated to do so for the benefit of a more accurate prediction.

Claim 12: Skinner does not explicitly disclose omitting from the median click calculation the same number of highest price quantities as lowest price quantities. Examiner takes Official Notice that it is well known in the statistical arts to eliminate an equal number of outliers from a median calculation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use well-known statistical methods in conjunction with the click data disclosed by Skinner. One of ordinary skill in the art would have been motivated to do so for the benefit of a more accurate prediction.

Claim 13: Claim 13 is substantially similar to claim 1, and is rejected under similar rationale.

Claim 14: Claim 14 is substantially similar to claim 11 and is rejected under similar rationale.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Garcia (US 2005/0256766), directed to a targeted internet search engine.
- Meisel (US 7,035,812), directed to enabling multi-element bidding for influencing a position on a search result list.
- Rebane (US 2004/0088241), directed to an automated bidding system for use with online auctions.
- Corn (US 2004/0167845), directed to determining a minimum price per click for a term in an auction-based internet search.
- Anderson (US 2004/0093327), directed to serving advertisements based on content.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil R. Kardos whose telephone number is (571) 270-3443. The examiner can normally be reached on Monday through Friday from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Neil R. Kardos
Examiner
Art Unit 3623

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